



JOHN JAY  
FIRST CHIEF JUSTICE  
OF THE SUPREME COURT  
OF THE UNITED STATES

## Article 10.

The solemn Ratifications of the present Treaty expected in good and due Form shall be exchanged between the contracting Parties in the space of six Months or sooner, if possible, to be computed from the Day of the Signature of the present Treaty. In Witness whereof We the undersigned, their Ministers Plenipotentiary, have in their Name and in Virtue of our full Powers, signed with our Hands the present Definitive Treaty, and caused the Seal of our Arms to be affixed thereto.

Done at Paris this third Day of September  
In the Year of our Lord one thousand seven hundred  
and Eighty three.

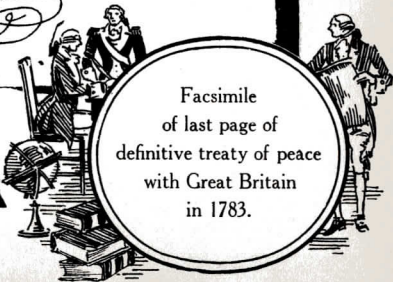
D Hartley

John Adams.

Franklin

John Jay

Facsimile  
of last page of  
definitive treaty of peace  
with Great Britain  
in 1783.



# JOHN JAY

## First Chief Justice of the Supreme Court of the United States

"What, sir, is the Supreme Court of the United States? It is the august representative of the wisdom and justice and conscience of this whole people, in the exposition of their Constitution and laws. It is the peaceful and venerable arbitrator between the citizens in all questions touching the extent and sway of Constitutional power. It is the great moral substitute for force in controversies between the People, the States and the Union."—HORACE BINNEY.



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# **The United States Supreme Court**

## **Chief Justices**

### **TERMS**

JOHN JAY	· New York	·	·	1789-1795
JOHN RUTLEDGE	· South Carolina	·	·	1795-1795
OLIVER ELLSWORTH	· Connecticut	·	·	1796-1800
JOHN MARSHALL	· Virginia	·	·	1801-1835
ROGER B. TANEY	· Maryland	·	·	1836-1864
SALMON P. CHASE	· Ohio	·	·	1864-1873
MORRISON R. WAITE	· Ohio	·	·	1874-1888
MELVILLE W. FULLER	· Illinois	·	·	1888-1910
EDWARD D. WHITE	· Louisiana	·	·	1910-1921
WILLIAM H. TAFT	· Connecticut	·	·	1921-1930
CHARLES E. HUGHES	· New York	·	·	1930-

## **Present Chief Justice and Associate Justices**

### **Chief Justice**

**CHARLES E. HUGHES**

### **Associate Justices**

JAMES CLARK McREYNOLDS	·	Tennessee
PIERCE BUTLER	·	Minnesota
HARLAN FISKE STONE	·	New York
OWEN J. ROBERTS	·	Pennsylvania
HUGO L. BLACK	·	Alabama
STANLEY FORMAN REED	·	Kentucky
FELIX FRANKFURTER	·	Massachusetts
WILLIAM O. DOUGLAS	·	Connecticut





## JOHN JAY

“**C**ONSIDERING the judicial system as the chief pillar upon which our national government must rest, I have thought it my duty to nominate for the high offices in that department, such men as I conceived would give dignity and luster to our national character.” So wrote George Washington, the first President of the United States, faced with the problem of appointing the Chief Justice and the Associate Justices of the Supreme Court of the United States. So highly did our first President regard the ability and accomplishments of John Jay that he offered him the choice of any of the federal offices, whereupon Jay intimated he would prefer that of Chief Justice of the Supreme Court, the highest judicial tribunal of the American republic.

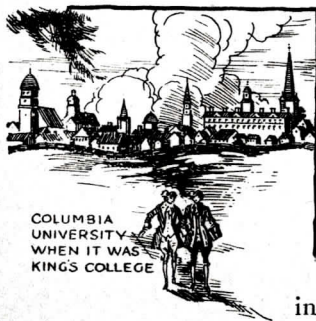
The Act of Congress establishing this great body—than which there is no more dignified or powerful tribunal of its kind in the world—was signed in the autumn of 1789, and was followed immediately by the appointment of John Jay as Chief Justice, and five Associate Justices. In a letter enclosing Jay’s commission, Washington wrote: “In nominating you for the important station which you now fill, I not only acted in conformity with my best judgment, but I trust I did a grateful thing to the good citizens of these United States.” Today we, as “citizens of these United States,” should become



better acquainted with the man to whom Washington entrusted the formative years of the Supreme Court, for John Jay ranks high in service to our country not only as the first Chief Justice, but as a diplomatist and a statesman, during one of the most critical periods of American history.

**Early Life** THE city of New York was the birthplace of John Jay, on the 12th of December, 1745. He was born into a wealthy and respected family, of French descent on his father's side, with a Dutch strain inherited from his mother, Mary Van Cortlandt. His father, Peter Jay, retired from a successful mercantile business before John was a year old, and the family moved to Rye, in Westchester County, New York.

John Jay was the eighth in a family of ten children. He spent three years at a school in New Rochelle and then under a private tutor prepared for college, which he entered when he was slightly over fourteen years old.



COLUMBIA  
UNIVERSITY  
WHEN IT WAS  
KING'S COLLEGE

King's College (now Columbia University) had been in existence only six years when Jay was enrolled in 1760; it was still in its infancy, and the tiny group of students of that day would be incalculably small if compared with the thousands of students which today throng Columbia. Among his friends at college,

Jay numbered Robert R. Livingston and Gouverneur Morris.



After his graduation, Jay entered the law office of Benjamin Kissam, binding himself as an apprentice on the payment of £200. In those days clerkship in a law office was an irksome and laborious task. Everything had to be written, and the drudgery of copying was endless. There were no printed blank forms which today save time and labor. Law books were ponderous affairs of reports and digests. It was about this time that Blackstone was delivering his celebrated lectures in London, and his Commentaries were not available in America until the third year of Jay's apprenticeship.

Jay was admitted to the bar in 1768. His practice began successfully, and soon he had established a reputation for his ability and legal attainments. In 1774, when he married Sarah Livingston, he was described in the notices of the wedding as "an eminent barrister."

**His Public Service Begins** ALTHOUGH still very young, John Jay took a prominent part in political events in New York leading up to the Revolution, identifying himself with the conservative element in the Whig party. He was a member of the committee organized to correspond with the sister Colonies, and it is believed that he drafted the resolution sent to Boston in May, 1774, urging that "a Congress of deputies from the Colonies in general is of the utmost moment." When this convention—the First Continental Congress—met in Philadelphia in September, Jay was one of the delegates from New York. He was only twenty-nine, and, with the exception of Edward Rutledge, the youngest member of Congress. He was delegated to prepare an Address to the People of Great Britain, in which he stated with great dignity the rights





of the Colonies and the wrongs inflicted upon them. Thomas Jefferson, not knowing who wrote the article, declared it "a production certainly of the finest pen in America." This was indeed high praise from one who was himself to be the author of the Declaration of Independence.

Jay was also a member of the Second Continental Congress, but, in May, 1776, was summoned to New York to take a seat in the Provincial Congress and lend his counsel in framing a constitution for New York. Because he was not in Philadelphia on that memorable Fourth of July, he missed being one of the Signers of the Declaration of Independence. When the Declaration was reported to the Provincial Congress of New York, on July 9, he gave it an enthusiastic endorsement by moving a resolution: "That the reasons assigned by the Continental Congress for declaring the United Colonies free and independent States are cogent and conclusive . . . We approve the same, and will, at the risk of our lives and fortunes, join with the other Colonies in supporting it."

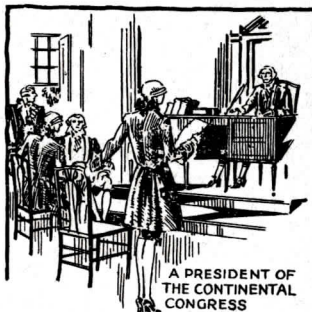
The New York State Constitution was adopted in April, 1777. Jay was chairman of the committee which drafted it. He acted as a member of the Council of Safety, and was appointed Chief Justice of the Supreme Court of New York, the first session of which opened at Kingston, September 9, 1777.

In December, 1778, after an absence of more than two years, Jay again took his seat in the Continental Congress and was elected its president. He was faced with difficult problems and his days were strenuous ones, but he met them with optimism and a feeling that every endeavor in behalf of the struggling United States was worth while. "It gives me pleasure, however, to reflect," he wrote





General Washington, "that the period is approaching when we shall be citizens of a better ordered state, and the spending of a few troublesome years of our eternity in doing good to this and future generations is not to be avoided or regretted. Things will come right, and these States will be great and flourishing."



**Mission to Spain** **I**N 1778, France determined to actively support the American cause. By a secret article annexed to the treaty between France and the United States, the right was reserved to Spain to become a party to the treaty, participating in its provisions wherever desirable. John Jay was sent to Spain as minister plenipotentiary to endeavor to bring this about, and to secure a loan of five million dollars. He and Mrs. Jay sailed for Spain in October, 1779. He was given a decidedly cold reception. The question of the free navigation of the Mississippi, which Congress had instructed Jay to preserve at all hazards, became the obstacle in negotiating the treaty. Finally, instructions came from Congress that concessions in this regard might be made, but again Spain delayed, and with the news of the surrender at Yorktown, Jay decided that a treaty made with such a sacrifice was no longer advisable.

His efforts to secure a loan were discouraging. He was placed in an awkward position as Congress, desperately in need of money to carry on the war, drew bills upon him for large sums. Jay had to accept these bills person-



ally to save the credit of the United States. After many efforts he succeeded in procuring a loan of \$150,000 from Spain, and France came to his aid for the deficiency with a loan, negotiated by Franklin.

### **The Treaty of Peace with Great Britain**

**B**ENJAMIN FRANKLIN, John Adams, Thomas Jefferson, Henry Laurens and John Jay were commissioned to negotiate a treaty of peace with Great Britain. Jefferson declined the appointment. Jay was not loath to leave Spain where his efforts had been of so little avail. He joined Dr. Franklin in Paris in June, 1782, and they had proceeded far with the negotiations before John Adams arrived. Congress had instructed the commissioners to undertake nothing without the knowledge and concurrence of the French Minister for Foreign Affairs, Count de Vergennes. Jay disapproved of this and persuaded his colleagues to negotiate independently with Great Britain. It was Jay also who insisted that Great Britain should treat with his country on an equal footing and should open negotiations with "the United States of America," recognizing its independence from the beginning.



The provisional articles were signed by the commissioners on November 30, 1782. Henry Laurens reached Paris just in time to sign his name as the fourth commissioner. The final treaty was concluded on September 3, 1783. It brought the United States even more than had been hoped for. Great Britain agreed to share with the United States the fisheries on the Grand Banks off Newfoundland. The navigation of the Mississippi River was



to remain open to both nations; this right had been secured to Great Britain in 1763. As defined in the treaty, the United States stretched from the Atlantic Ocean and the St. Croix River westward to the Mississippi, and from the forty-fifth parallel, the St. Lawrence River, the Great Lakes, and the Lake of the Woods on the north, to the northern boundary of Florida. These boundaries were considered accurate at the time, but many of them had to be determined by later negotiations and were not actually settled until the execution of the Webster-Ashburton Treaty in 1842.

Jay's contemporaries were full of praise for his part in so successfully concluding the treaty, and gave him more credit than any of the other commissioners. "A man and his office were never better united than Mr. Jay and the commission for peace," wrote John Adams, who also later wrote: "The principal merit of the negotiation was Mr. Jay's."



### **The Constitution of the United States is Adopted**

"We have a government, you know, to form."—JOHN JAY.

**M**R. and Mrs. Jay had been absent from this country for

five years when they returned to New York in 1784. Mr. Jay hoped to resume private life, but found that two months previously he had been appointed Secretary for Foreign Affairs, the most responsible and important office under the Confederation.

The Articles of Confederation had been in effect since 1781, and it was now evident that they were a failure. The six years from 1783 to 1789 have been called the critical period of American history. The new country





was practically without a government. It was threatened with financial ruin and torn by faction and interstate jealousies. The Confederation was little more than a name; there was no national law and order. The only remedy for bringing about national security was a more centralized form of government. This Jay strongly advocated as did Washington, Hamilton, Madison and other Federalists. "It is my first wish," wrote Jay, "to see the United States assume and merit the character of one great nation, whose territory is divided into different States merely for more convenient government and the more easy and prompt administration of justice."

That Jay was an early believer in one of the fundamental principles of our Constitution is shown in a letter he wrote to Thomas Jefferson in 1786: "To vest legislative, judicial, and executive powers in one and the same body of men, and that, too, in a body daily changing its members, can never be wise. In my opinion those three great departments of sovereignty should be forever separated, and so distributed as to serve as checks on each other."

Jay was not a member of the Constitutional Convention of 1787, but with Hamilton and Madison, he collaborated in writing a series of newspaper articles which were most effective in shaping public opinion toward the cause of Federalism. These articles—of which Jay wrote five—were later published under the name of "The Federalist," and are regarded as the most valuable commentary ever written upon the American Constitution. Jay also published anonymously a pamphlet addressed to the people of New York, which won over many anti-Federalists to the new Constitution. "That gentleman," wrote John Adams of Mr. Jay, "had as much influence in





digesting the Constitution and obtaining its adoption, as any man in the nation."

## **The Supreme Court of the United States**

**T**HE office of secretary for foreign affairs expired with the old government, and at Washington's request, John Jay officiated as Secretary of State until Jefferson returned from France in the spring of 1790. Meanwhile, September 26, 1789, Jay had become the first Chief Justice of the Supreme Court of the United States.

The Supreme Court was created by Article III, Section 1, of the Constitution:

"The judicial Power of the United States shall be vested in one supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish. The Judges, both of the supreme and inferior Courts, shall hold their Offices during good Behavior, and shall, at stated Times, receive for their Services, a Compensation, which shall not be diminished during their Continuance in Office."

In the second section of the same article are defined the classes of cases over which the Supreme Court has original and appellate jurisdiction. In Article II, Section 2, the power of appointment of the Judges of the Supreme Court is delegated to the President, "by and with the advice and consent of the Senate."

The problem of actually organizing the National Judiciary was left to the First Congress, which passed the Judiciary Act—approved by the President on September 24, 1789—which provided that the Supreme Court should consist of a Chief Justice and five Associate Justices,\* and should hold annually two sessions at the seat of government.

\*As demands upon the Supreme Court have increased, the number of Justices has been increased. Since 1869, the Supreme Court has been composed of one Chief Justice and eight Associate Justices.



The importance of this powerful tribunal cannot be better described than by Washington's words when, in commissioning John Jay, he addressed him as "the head of that department which must be considered as the keystone of our political fabric." The function and power of the Supreme Court were unprecedented, and are to this day unparalleled in any other nation. Empowered to arbitrate between the States, the Supreme Court is also the interpreter and guardian of the Constitution, possessing the right to deny the validity of a state or national law which is in any way contrary to the letter or spirit of the Constitution. The authority to deny the validity of a national law was not actually recognized until John Marshall, the fourth and great Chief Justice, so interpreted the Constitution in his famous decision in the case of *Marbury v. Madison*, and once and for all time established a principle which is fundamental in our constitutional jurisprudence.

**Opening of the Court** WITH Chief Justice Jay presiding, the Supreme Court was formally opened in New York City, then the seat of the government, on February 2, 1790. The commissions of the Judges and of the Attorney-General were read and published, and a crier appointed. During the next few days a clerk was sworn in and the seal of the Court was adopted. Rules were made for the admission of attorneys and counselors, and nineteen were admitted. As there was no case upon the docket, the Court adjourned until the following August. At this first session, the Judges were attired in robes, but the traditional wig of the English Court was not adopted.



John Jay was forty-four when he became Chief Justice. A portrait of him in the gown in which he used to preside hangs in the robing room of the Supreme Court Chamber in Washington. He was dignified and retiring in manner; almost six feet tall, slightly built, with penetrating eyes. His vigorous mind and sound judgment inspired a high degree of respect. "When my confidence in Mr. Jay shall cease," wrote John Adams, "I must give up the cause of confidence in all men."

During the short time in which Chief Justice Jay presided, only a few cases came before the Court. The great influence and power of the Supreme Court were not as yet apparent. Its period of great prestige came with the chief justiceship of John Marshall (1801-1835), whose opinions gave life and power to the Constitution and molded our government into a great and powerful nation. Most important of the cases coming before Chief Justice Jay was that of *Chisholm v. Georgia*, which raised the question of the suability of a state, and brought to an issue the conflicting sovereignties of the states and the nation. Jay's decision was against the State of Georgia. This led to a general feeling that states ought not to be subject to suit brought by private individuals, and resulted in the adoption of the eleventh amendment to the Constitution, forbidding suit against a state by citizens of other states or of foreign states.

### **Beginning of the Circuit Courts**

**F**OR the organization of the inferior federal courts, the Judiciary Act of 1789 provided for thirteen District Courts and for three Circuit Courts,\* each

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\*At present there are nine Circuit Courts of Appeals, and a Justice of the Supreme Court is assigned to each as a Circuit Justice. The volume of business before the Supreme Court prevents more than an occasional attendance.





of the latter to be composed of two Supreme Court Justices sitting with a District Court Judge. Chief Justice Jay's circuit included New York and New England. He rode the first circuit in the spring of 1790, and was received everywhere with enthusiasm. Twice a year he held court in New York and at various places in New England; in 1791, his circuit extended to Bennington, Vermont.

### **Special Envoy to Great Britain—The Jay Treaty**

"They who have leveled uneven ground, know how little of the work afterward appears."

—From Jay's letter to Thomas Jefferson, Secretary of State, enclosing the treaty.

OUR foreign affairs took a serious turn in 1793 with the outbreak of war between France and Great Britain, as both countries were threatening our neutrality. Public sentiment in America was more hostile

toward England than toward France. Above everything else, President Washington wished to avert war, and decided to send a special envoy to England to negotiate a commercial treaty and compose differences with Great Britain. Washington turned first to Hamilton, but he was too deeply entangled in political enmities. Hamilton himself proposed Chief Justice Jay, remarking that he was "the only man in whose qualifications for success there would be thorough confidence."

Jay, accordingly, sailed for England in May, 1794, and the treaty—known in history as the Jay Treaty—was signed on the 19th of November. In America the treaty was condemned by the populace even before it became known, but it was welcomed with favor by statesmen, and when actually in operation, became more popular.





## **Second Governor of New York 1795 - 1801**

**W**HEN Jay returned from England, he resigned

from the Supreme Court, as he had been elected governor of New York. The first Governor, George Clinton, had continued in office for eighteen years.

With the subsiding of a serious epidemic of yellow fever, Governor Jay issued a proclamation appointing Thursday, November 26, 1795, a day of thanksgiving throughout the State. In other states, on exceptional occasions, days of thanksgiving had been appointed, but this was the first Thanksgiving Day in New York. In 1797, the seat of government in New York State was changed to Albany.

## **Retirement at Bedford**

"I have a long life to look back upon,  
and an eternity to look forward to."

—JOHN JAY

**P**RESIDENT ADAMS, in 1800, re-nominated John Jay Chief Justice of the Supreme Court, and the nomination was

confirmed by the Senate, but Jay declined the appointment. For twenty-seven years he had been in active public service, and he had long looked forward to the time when he might retire and live in the country. He had inherited an estate at Bedford, New York, and here, after his retirement from the governorship, he lived for the remaining twenty-eight years of his life. The first year was saddened by the death of his wife. Children and grandchildren helped to lessen his loneliness; he enjoyed the company of his books, and many distinguished friends visited him. Like his great friend, Washington, he took a keen interest in agriculture and derived pleasure in supervising the cultivation of his own acres.



Occasionally, Jay entertained guests by relating anecdotes of the Revolution. In writing "The Spy," J. Fenimore Cooper used as the foundation for his principal character, a story which he heard John Jay tell, concerning a man whom he employed, when on a secret committee during the Revolution, to act as a spy and furnish information regarding the enemy.

From his quiet retreat at Bedford, Jay watched with keen appreciation the ascent of the Supreme Court, under Chief Justice Marshall, to the important place it was destined to fill in our government. He saw the Constitution, which he had upheld and championed during the struggle for its ratification, become a vital, living thing, capable of meeting the needs of an expanding and developing nation. He saw the original area of the United States, the boundaries of which had been set by the Peace Treaty of 1783, more than doubled by the Louisiana Purchase.

One by one, John Jay's friends and associates, who had been the great leaders in the founding of this nation, had gone. Franklin lived only to see the initial organization of the government under the new Constitution. On the threshold of the last year of the eighteenth century, Washington died, followed within a few years by Hamilton. Both Jefferson and Adams lived until the fiftieth anniversary of the signing of the Declaration of Independence, and both died on that very day. Like the "Last Leaf," John Jay survived them all, but he too fell, on May 17, 1829, at the age of eighty-three, and another life of distinguished service to America was ended.

